IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24417 of 2004

Between:

B. Venkatesham, S/o. narsimha, Hindu, Conductor, E.No.255102
APSRTC, Narkatpally Bus Depot, Nalgonda District.

..... PETITIONER

AND

1 The Depot Manager, APSRTC, Narkatpally Bus Depot, Nalgonda District.
2 The Dy. Chief Traffic Manager, Nalgonda.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ or orders or direction more particularly one in the nature of writ of mandamus declaring the at the action of the respondents in imposing the punishment of deferment of annual increment when next falls for a period of Two years with cumulative effect on future increments as bad, arbitrary, illegal, unjust and unreasonable and violative of principles of natural jutice and contrary to the judgments of this Hon'ble Court and also the apex court by setting aside the final order No.02/62(85)/93-NKP dt. 1.10.1993 of the R1 herein and consequently direct the respondents to add the deferred increments and pay arrears.

Counsel for the Petitioner:MR.P.VENKATESWARA RAO

Counsel for the Respondent Nos.1&2: MR.P.VINAYAKA SWAMY, STANDING COUNSEL FOR APSRTC

The Court at the stage of admission, made the following :

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ORDER:

The petitioner is working as a conductor in APSRTC. He was issued a charge memo dated 12.08.1993 for having failed to observe the rule 'Issue and Start' and for having failed to collect the fare issue ticket to a batch of two passengers who boarded the bus. The petitioner had submitted his explanation. The same was taken into account and the 1st respondent has passed orders dated 1.10.1993 imposing stoppage of annual increment with cumulative effect for a period of two years. The petitioner challenges the same in this writ petition on the ground that though, what was imposed is a major penalty, the respondents did not hold domestic enquiry.

Heard learned counsel for the petitioner and learned standing counsel for the respondents.

The learned counsel for the petitioner places reliance upon a judgment of Supreme Court in KULVANT SINGH GILL V.STATE OF

PUNJAB as well as a decision of this court in S.K.MASTHAN v.MANAGING DIRECTOR.

The learned standing counsel Sri P.Vinayaka Swamy on the other hand submits that the writ petition cannot be maintained since it is filed 11 years after the impugned order and the same deserves to be dismissed on the ground of latches.

It is true that the writ petition is filed 11 years after the 1st respondent has passed orders imposing penalty. In the normal course of things, the writ petition deserves to be dismissed on the ground of latches. However, in the matter of rights of employees, the Supreme Court in GURUMAL SING v.PRINCIPAL, GOVERNMENT COLLEGE OF EDUCATION has held that the belated challenge of the orders detrimental to the interests of the employees should not result in total denial of relief, and at the most they can be denied back wages. Therefore, the writ petition cannot be dismissed on the ground of latches alone.

Through the impugned order the respondents have imposed the penalty of stoppage of two annual increments with cumulative effect. No departmental enquiry was conducted. From a perusal of the Classiffication Control & Appeal Regulations, it is evident that the penalty of stoppage of two increments with cumulative effect can be treated as a minor penalty. Therefore, the same could have been imposed only after conducting enquiry. The Hon'ble Supreme Court in Kulvant Singh Gill's case (1 supra) held that major penalty cannot be imposed without conducting the departmental enquiry. In that view of the matter the impugned order cannot be sustained.

As a result of setting aside of the impugned order the matter has to be remitted back to the 2nd respondent for fresh consideration. However, having regard to the fact that the order was passed more than a decade ago, this Court feels it just and proper to treat the punishment against the petitioner, as the one for stoppage of two increments without cumulative effect. Since, the petitioner has challenged the impugned order after 11 years, it is held that he shall

not be entitled for any back wages or arrears of pay, as a consequence of the modification of the punishment. The petitioner shall however be entitled for refixation of pay with prospective effect.

The writ petition is accordingly disposed of with the above direction. No costs.

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28.12.2004

bsv

To

1 The Depot Manager, APSRTC, Narkatpally Bus Depot, Nalgonda District.
2 The Deputy Chief Traffic Manager, Nalgonda.

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